

## CCRB INVESTIGATIVE RECOMMENDATION

|                                                   |                                                                             |                               |                                                       |                                    |                                 |
|---------------------------------------------------|-----------------------------------------------------------------------------|-------------------------------|-------------------------------------------------------|------------------------------------|---------------------------------|
| Investigator:<br>Peter Hoy (S7)                   | Team:<br>Team # 5                                                           | CCRB Case #:<br>201007564     | <input checked="" type="checkbox"/> Force             | <input type="checkbox"/> Discourt. | <input type="checkbox"/> U.S.   |
|                                                   |                                                                             |                               | <input checked="" type="checkbox"/> Abuse             | <input type="checkbox"/> O.L.      | <input type="checkbox"/> Injury |
| Incident Date(s)<br>Wednesday, 06/02/2010 9:30 PM | Location of Incident:<br>intersection of Delancey Street and Suffolk Street | Precinct:<br>07               | 18 Mo. SOL<br>12/2/2011                               | EO SOL<br>12/2/2011                |                                 |
| Date/Time CV Reported<br>Fri, 06/04/2010 2:41 PM  | CV Reported At:<br>CCRB                                                     | How CV Reported:<br>In-person | Date/Time Received at CCRB<br>Fri, 06/04/2010 2:41 PM |                                    |                                 |

| Complainant/Victim | Type | Home Address |
|--------------------|------|--------------|
|                    |      |              |

| Subject Officer(s)     | Shield | TaxID  | Command |
|------------------------|--------|--------|---------|
| 1. SGT Mark Vazquez    | 02696  | 933447 | 007 PCT |
| 2. POM Joseph Federico | 13974  | 944261 | 007 PCT |

| Witness Officer(s) | Shield No | Tax No | Cmd Name |
|--------------------|-----------|--------|----------|
| 1. POM Allan Taeza | 30253     | 929493 | 007 PCT  |
| 2. POM Nanhao Chen | 13970     | 944428 | 007 PCT  |

| Officer(s)           | Allegation                                                   | Investigator Recommendation |
|----------------------|--------------------------------------------------------------|-----------------------------|
| A.SGT Mark Vazquez   | Force: Sgt. Mark Vazquez pointed his gun at § 87(2)(b)       |                             |
| B.SGT Mark Vazquez   | Abuse: Sgt. Mark Vazquez supervised the frisk of § 87(2)(b)  |                             |
| C.SGT Mark Vazquez   | Abuse: Sgt. Mark Vazquez supervised the search of § 87(2)(b) |                             |
| § 87(4-b) § 87(2)(g) |                                                              |                             |

## Case Summary

On June 4, 2010, § 87(2)(b) filed a complaint with the Civilian Complaint Review Board in person. On June 2, 2010, at approximately 9:30 p.m., § 87(2)(b) was approached by police officers in the vicinity Delancey Street and Suffolk Street in Manhattan. The following allegations resulted:

- **Allegation A – Force: Sgt. Mark Vazquez pointed his gun at** § 87(2)(b) § 87(2)(g)  
§ 87(2)(b)  
§ 87(2)(b)
- **Allegation B – Abuse of Authority: Sgt. Mark Vazquez supervised the frisk of** § 87(2)(b)  
§ 87(2)(g)  
§ 87(2)(b).
- **Allegation C – Abuse of Authority: Sgt. Mark Vazquez supervised the search of**  
§ 87(2)(b) § 87(2)(g)  
§ 87(2)(b).
- § 87(2)(b), § 87(2)(g), § 87(4-b)  
§ 87(2)(b)  
§ 87(2)(b)  
§ 87(2)(b).

## Results of Investigation

### Civilian Statements

**Complainant:** § 87(2)(b)

- *Born* § 87(2)(b) § 87(2)(b) *is a Hispanic male, stands five feet and four inches, weighs 125 pounds and has brown hair and brown eyes.* § 87(2)(b)  
§ 87(2)(b)

### CCRB Testimony

On June 4, 2010, § 87(2)(b) was interviewed at the CCRB (encl. 6A-E). During his interview, he was offered, but rejected mediation. A summary of his testimony follows.

On June 2, 2010, at what § 87(2)(b) reported as 9:00 p.m., but was later determined by the investigation to be 9:30 p.m., § 87(2)(b) was standing near the entrance of a parking lot on Delancey Street between Norfolk and Suffolk Streets in Manhattan. He was eating a sandwich and drinking from a can of soda. He was wearing blue pants and a white t-shirt. An officer, identified by the investigation as Sgt. Mark Vazquez, approached with his gun pointed towards § 87(2)(b)'s head and asked, "What you got in your hand, a knife?" § 87(2)(b) read the name Vazquez on this officer's uniform and described this officer as a Hispanic male in his late 20s that stood five feet and nine inches, weighed 150-160 pounds and had dark brown hair.

§ 87(2)(b) responded by telling the officer he only had a can of soda in his hand. Sgt. Vazquez then instructed him to get on the ground, which § 87(2)(b) did. Sgt. Vazquez frisked § 87(2)(b)'s pants pockets, and said, "I got the knife, I got the knife," as he reached into § 87(2)(b)'s front pants pocket and removed a black flip cell phone. At this time, an officer identified by the investigation as PO Federico, arrived in marked car number 3904. § 87(2)(b) described this officer as a white male in his late 20s that stood about five feet and nine inches, was little heavier than Sgt. Vazquez and had dirty blonde hair.

Soon after, two additional white male officers, identified by the investigation as PO Allan

Taeza and PO Nanhao Chen, arrived with an unidentified female. This woman told the officers, “It’s not him,” and then left with PO Chen and PO Taeza. Sgt. Vazquez then explained to § 87(2)(b) that he matched the description of an individual with a knife for whom that they had been looking. § 87(2)(b) argued with Sgt. Vazquez about the incident, and asked for his shield number so he could file a complaint. Sgt. Vazquez provided him with the number 113974.

### **Attempts to Contact Civilians**

§ 87(2)(g)  
§ 87(2)(g)  
§ 87(2)(g); however, she could not be identified with the available information. Her name and contact information were not recorded in the memo books of PO Federico, Sgt. Vazquez, PO Chen or PO Taeza. Her name was not listed on the SPRINT report and the telephone number listed on the SPRINT was not in service.

### **NYPD Statements:**

#### **Subject Officer: SGT. MARK VAZQUEZ**

- *Born § 87(2)(b), Sgt. Mark Vazquez is a Hispanic male, stands five feet and eleven inches, weighs 180 pounds and has brown hair and brown eyes.*
- *On June 2, 2010, Sgt. Vazquez worked from 2:50 p.m. to 11:47 p.m. as the patrol supervisor, in uniform and assigned to marked vehicle number 4814 with PO Federico.*

### **Memo Book**

Sgt. Vazquez made the following memo book entries related to this incident (encl. 7A-C): at 9:30 p.m., 10-52, dispute with knife at § 87(2)(b) at 9:35 p.m., 10-93 Q, UF250 prepared, male stopped opposite § 87(2)(b) witness stated male standing across street with white t-shirt has a knife and was harassing her; during stop, witness stated the male stopped was not the perpetrator in question, but resembled him, UF250 prepared by PO Federico.

### **CCRB Testimony**

On December 1, 2010, Sgt. Vazquez was interviewed at the CCRB (encl. 8A-B). A summary of his testimony follows.

On June 2, 2010, at 9:30 p.m., Sgt. Vazquez and PO Federico arrived at a store, located at § 87(2)(b) in Manhattan, in response to radio call about a dispute with a knife. There, a female complainant told Sgt. Vazquez that her boyfriend was harassing her and was in possession of a knife. Sgt. Vazquez did not know the complainant’s name, but described her as a dark skinned Hispanic female in her early 20s. The female complainant stepped out of the store, pointed directly across the street to a Hispanic male wearing a white t-shirt and identified him as the perpetrator. This man, who Sgt. Vazquez later determined was § 87(2)(b) had been standing by a chain link fence with no one else around and it was immediately clear to whom the complainant was referring. Sgt. Vazquez ran across the street on foot towards § 87(2)(b) From about 15 away, Sgt. Vazquez drew his firearm, pointed it at § 87(2)(b) and told § 87(2)(b) to show his hands. Sgt. Vazquez drew his firearm for safety because he believed that § 87(2)(b) had a knife and because his hands were not visible. § 87(2)(b) responded by asking why, but did not immediately show the officers his hands. Sgt. Vazquez believed § 87(2)(b) may have been intoxicated because he was slurring his speech and acting irrationally and agitated.

When Sgt. Vazquez instructed § 87(2)(b) to get on the ground, § 87(2)(b) complied, removing his hands from his pockets and putting down a bag he was holding. At this point, Sgt. Vazquez holstered his firearm. At Sgt. Vazquez’s direction, PO Federico, who had also arrived

by this time, frisked § 87(2)(b) for weapons. Sgt. Vazquez did not search § 87(2)(b) and did not see or instruct PO Federico to do this.

Towards the end of the incident, PO Chen and PO Taeza arrived; however, Sgt. Vazquez was not aware of any interaction these officers had with § 87(2)(b). The female complainant approached and said that § 87(2)(b) was not the perpetrator with the knife, but only looked like him. Sgt. Vazquez instructed PO Chen and PO Taeza to take the female complainant in their car to canvass the area and complete any necessary paperwork. He also instructed PO Federico to complete a Stop, Question and Frisk Report.

**Subject Officer: PO JOSEPH FEDERICO**

- Born § 87(2)(b), PO Federico is a white male, stands five feet and nine inches, weighs 165 pounds and has brown hair and brown eyes.
- On June 2, 2010, PO Federico worked from 4:00 p.m. to 11:35 p.m. At 7:40 p.m., he switched his assignment from Sector C to operator for Sgt. Vazquez. He was dressed in uniform and assigned a marked motor vehicle.

**Memo Book**

PO Federico made the following memo book entries related to this incident (encl. 9A-C): At 9:30 p.m., dispute with a knife at § 87(2)(b) in Manhattan; female complainant identified a male Hispanic in a white shirt and gray pants across Delancey Street as the male with a knife; one male stopped; defendant § 87(2)(b) address § 87(2)(b), date of birth § 87(2)(b), male Hispanic approximately five feet and four inches tall; New York State identification produced, phone number refused; suspect highly intoxicated; Stop, Question and Frisk Report prepared; hands on suspect for furtive movements and report of weapon; gun drawn; report from witness, crime suspected was criminal possession of weapon; suspect detained less than five minutes; opposite § 87(2)(b) observed less than one minute; Stop, Question and Frisk Report prepared; SPRINT number § 87(2)(b) witness states not perpetrator with knife; at 9:40 p.m., resumed patrol.

**CCRB Testimony**

On July 16, 2010, PO Joseph Federico was interviewed at the CCRB (encl. 10A-B). A summary of his testimony follows.

At the time and location of the incident, a female complainant pointed out § 87(2)(b) to PO Federico and Sgt. Vazquez. § 87(2)(b) was the only person in the area that the complainant pointed towards. PO Federico did not remember any details of the man's description beyond what he wrote in his memo book, but remembered that § 87(2)(b) matched the complainant's description.

Sgt. Vazquez approached § 87(2)(b) on foot while PO Federico drove the police vehicle around the block and pulled up on the other side of Delancey Street in front of § 87(2)(b). PO Federico drew and pointed his firearm at § 87(2)(b) as he approached. PO Federico believed that Sgt. Vazquez drew his firearm as well. PO Federico did this because § 87(2)(b)'s hands were in his lap covered by a large brown paper bag, and § 87(2)(b) refused to show them, despite both officers ordering him to numerous times. § 87(2)(b) only responded by making some remarks in Spanish and some other remarks that were unintelligible. § 87(2)(b)'s speech was slurred leading PO Federico to believe he was intoxicated. The officers continued to tell § 87(2)(b) to show his hands and instructed him to stand up. § 87(2)(b) responded by throwing his bag into the air and lying down on the ground. Upon seeing that § 87(2)(b) did not have a weapon, PO Federico holstered his firearm.

PO Federico frisked § 87(2)(b)'s waist band and chest area while he was on the ground,

but did not search him or reach into his pockets. He did not feel any objects that he believed to be weapons and did not recover anything during the frisk. He believed that Sgt. Vazquez also frisked § 87(2)(b) but did not see Sgt. Vazquez reach into his pockets.

PO Federico asked § 87(2)(b) for ID, which § 87(2)(b) provided. At about this time, a female complainant approached and told the officers that § 87(2)(b) was not the person that had brandished the knife, but looked like him. PO Federico believed that another sector car handled the job after that. PO Federico wrote a Stop, Question and Frisk Report, but did not record the number in his memo book or indicate where he filed the report. PO Federico indicated that the SPRINT number was § 87(2)(b)

## **NYPD Documents**

### **SPRINT Report**

SPRINT report § 87(2)(b) (encl. 13A-B) indicates that at 9:20 p.m., an unidentified female caller stated her ex-boyfriend, who she described as a Hispanic male wearing a white t-shirt, blue jeans and a blue Yankees hat, has a knife in his pocket; at 9:23 p.m., the female caller stated that the perpetrator also has a warrant out for his arrest; that she is scared to leave work; and that the male is the vicinity of § 87(2)(b) possibly near the highway; at 9:25 p.m., the 7<sup>th</sup> Precinct patrol sergeant arrived on the scene; at 9:26 p.m., the number provided by the female complainant was checked and determined not to be in service; at 9:28 p.m., a 7<sup>th</sup> Precinct conditions auto arrived on the scene and then resumed patrol; at 9:31 p.m., officers assigned to the 7<sup>th</sup> Precinct Sector B prepared a criminal complaint report; at 9:32 p.m., officers from Sector B canvassed location with the female complainant; at 9:34 p.m., the patrol sergeant stopped one male and stated a Stop Question and Frisk report was prepared; at 9:54 p.m., Sector B officers left the female complainant at § 87(2)(b) negative results on canvass, and the patrol sergeant resumed patrol; at 10:23, Sector B officers prepared a domestic incident report.

### **Memo Books**

The memo books of PO Chen (encl. 11A-C) and PO Taeza (encl. 12A-C) indicate that at on June 2, 2010, at 9:35 p.m., PO Chen and PO Taeza canvassed the area of § 87(2)(b) with a female complainant, whose name and contact information was not recorded.

### **Roll Call**

The 7<sup>th</sup> Precinct Roll Call from the date of incident (encl. 16ac) shows that PO Chen and PO Taeza were assigned to Sector B; that Sgt. Vazquez was the patrol sergeant; and that PO Phillip Chau, who had been assigned to be the sergeant's operator, and PO Federico, who had been assigned to Sector C, had their assignments changed.

### **Stop, Question and Frisk Report and Index**

No handwritten Stop Question Frisk Report related to this incident was available. Neither the Stop Question and Frisk Report Log (encl. 14) or Index Coversheet (encl. 15A-C) list any Stop Question Frisk Report filled out for § 87(2)(b) or by PO Federico on or around the date of incident in the 7<sup>th</sup> Precinct.

### **Status of Civil Proceedings**

- As of January 4, 2011, § 87(2)(b) has not filed a Notice of Claim with the City of New York with regard to the incident (encl. 19).

[§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

### **Civilian CCRB History**

§ 87(2)(b) has filed two prior CCRB complaints (encl. 4):

- § 87(2)(b)

### **Subject Officers CCRB History**

- Sgt. Mark Vazquez has been a member of the service for seven years and there have been no substantiated CCRB allegations against him (encl. 3A).
- PO Joseph Federico has been a member of the service for three years and there have been no substantiated CCRB allegations against him (encl. 3B).

### **Conclusion**

### **Identification of Subject Officers**

§ 87(2)(b) read the name Vazquez on the uniform of the officer that first approached. § 87(2)(g) . § 87(2)(b) alleged that Sgt. Vazquez frisked and searched him. § 87(2)(g)

### **Investigative Findings and Recommendations**

#### **Allegations Not Pleaded:**

§ 87(2)(b) alleged that Sgt. Vazquez approached with his gun pointed at him, thereby restricting his liberty of movement. § 87(2)(g) Although PO Federico admitted he also had his gun drawn during the incident, this was not alleged by § 87(2)(b) § 87(2)(g).

#### **Allegation A – Force: Sgt. Mark Vazquez pointed his gun at § 87(2)(b)**

§ 87(2)(b) alleged that as Sgt. Vazquez approached him, the officer had his gun pointed at his head. Sgt. Vazquez confirmed that he approached with his gun pointed at § 87(2)(b)

According to *PD vs. Gliner* (encl. 1A-E), NYPD policy allows an officer to draw his firearm and point it at another person if he has a reasonable fear for his safety. Officers are given broad discretion in such instances. Furthermore, *PD vs. Gliner* states that in order to determine whether pointing a gun rises to the level of misconduct, one must assess the reasonableness of the officer's actions in the totality of the surrounding circumstances.

§ 87(2)(g)

§ 87(2)(g) [REDACTED]  
[REDACTED]  
[REDACTED]

§ 87(2)(g) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**Allegation B – Abuse of Authority: Sgt. Mark Vazquez supervised the frisk of** § 87(2)(b)

[REDACTED]  
[REDACTED] alleged that an officer frisked him during the incident. § 87(2)(g) [REDACTED]  
[REDACTED]

According to Patrol Guide Procedure 212-11 (encl. 2A-C), an officer may frisk an individual if he reasonably suspects he is in danger of physical injury.

§ 87(2)(g) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED].

**Allegation C – Abuse of Authority: Sgt. Mark Vazquez supervised the search of** § 87(2)(b)

[REDACTED]  
[REDACTED] alleged that an officer searched his pocket during the incident. § 87(2)(g) [REDACTED]  
[REDACTED].

According to Patrol Guide Procedure 212-11 (encl. 2A-C), an officer may search an individual when performing a frisk if the frisk reveals object which may be a weapon. It also notes that “only that portion of the suspect's clothing where object was felt may be searched.”

§ 87(2)(g) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED].

§ 87(2)(g), § 87(4-b) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED].

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Team: 5

Investigator: \_\_\_\_\_  
Signature                      Print                      Date

Supervisor: \_\_\_\_\_  
Title/Signature                      Print                      Date

Reviewer: \_\_\_\_\_  
Title/Signature                      Print                      Date

Reviewer: \_\_\_\_\_  
Title/Signature                      Print                      Date